



City of Seattle

Gregory J. Nickels, Mayor

Seattle Public Utilities

Ray Hoffman, Acting Director

August 7, 2009

RECEIVED

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Environmental
Cleanup Office

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8/7/2009

Sheila M. Eckman,
Manager
Site Cleanup Unit 3
1200 Sixth Avenue, Suite 900
Seattle, WA. 98101-3140

Dear Ms. Sheila,

I am responding to your letter dated July 23, 2009. (b) (6) and unavailable for consultation when it arrived and only returned on August 3rd, which is the reason I could not respond sooner. As I hope you were informed by Charlie Ordine, the City's attorney and Boeing's attorney agreed on July 14th that the issue of whether remedial action in Slip 4 will impair the value of Boeing's property will be addressed in the context of the pending litigation. A copy of the email exchange documenting that agreement is attached.

We were, therefore, surprised to receive your letter the following week. Unfortunately, Boeing apparently took it as permission to seek to impose conditions and obligations on the City that go beyond what is necessary or fair. For example, Boeing's proposed agreement (copy attached) seeks to confirm that Boeing has property rights that the City believes have been waived or lost. The nature and extent of Boeing's property rights should be resolved in the pending litigation as part of Boeing's contention that the remedial action will impair the value of its rights. Boeing's proposed agreement requires Boeing's approval of changes to the Statement of Work, EPA Action memorandum, or Design Submittals. That is obviously unworkable, given that EPA has the authority to require changes to those documents. And Boeing's proposal requires a broad indemnity from the City, which is unfair, given that Boeing will greatly benefit from having contamination removed and capped, for two reasons: First, capping vastly reduces Boeing's share of remedial costs by avoiding dredging the entire slip to navigational depth; and, Second, Boeing's property will be more usable and saleable with the contamination removed and capped than it is now. A broad indemnity is also contrary to state law unless authorized by the City Council, a process which takes months. See RCW 35.32A.090.

We have made a counter-proposal (copy attached) that documents Boeing's agreement not to obstruct or delay the remedial work in Slip 4, and formalizes the agreement to use the pending litigation as the context in which to resolve whether the remedial work decreases the value of Boeing's property. Our proposed Memorandum of Understanding is all that is necessary and fair given that the parties have ongoing disputes which will be addressed in the litigation context.

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We also note that King County is a signatory to the Slip 4 ASAOC and therefore needs to be a signatory to any agreement regarding the remedial action. We have provided counsel for King County with your letter, Boeing's proposal, and our counter-proposal to facilitate King County's participation.

We hope you will agree that the City is making reasonable efforts to conclude this matter. Although we cannot be sure that the three parties will have a final written agreement by August 31st, the City will continue moving toward that goal. We hope you will accommodate an extension if necessary.

Sincerely,

A handwritten signature in blue ink, appearing to read "Martin Baker", with a stylized, flowing script.

Martin Baker
Deputy Director
Corporate Strategies & Communications
Seattle Public Utilities

cc: Dan Opalski
Laura Wishik,